IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

OP.No. 21533 of 1999(L)

PETITIONER:

K.C. LUKOSE, RETD. ASSISTANT ENGINEER, KARUKAMALAYIL HOUSE, PERUMBAIKADU POST, KOTTAYAM - 686 028.

BY ADV. SRI.B.KRISHNA MANI
SRI.V.PREMCHAND

RESPONDENTS:

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1. STATE OF KERALA, REP. BY CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. CHIEF ENGINEER, ADMINISTRATION, P.W.D., NEAR MUSEUM, THIRUVANANTHAPURAM.

3. THE EXECUTIVE ENGINEER, P.W.D. BUILDINGS DIVISION, KOTTAYAM.

4. THE ACCOUONTANT GENERAL (A&E), KERALA, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. SURARSHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/01/2007, THE COURT ON THE SAME DAY, DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF ORDER DT. 9-11-1982.

EXT.P2 ORDER DT. 15-4-1988.

EXT.P3 COMMUNICATION DT. 4-2-1993.

EXT.P4 REPLY DT. 22-2-1993.

EXT.P5 JUDGMENT IN O.P.6509/1993 DT. 17-11-1998.

EXT.P6 NOTICE DT. 1-4-1999.

EXT.P7 REPRESENTATION DT. 7-4-1999.

EXT.P8 REPRESENTATION DT. 9-4-1999.

EXT.P9 COMMUNICATION DT.23-4-1999.

EXT.P10 REPRESENTATION DT. 10-5-1999.

EXT.P11 ORDER DT. 29-7-1999.

EXT.P12 ORDER DT. 7-7-1992.

EXT.P13 CIRCULAR DT. 5-7-1991.

EXT.P14 GOVT. ORDER DT. 8-2-1988.

EXT.P15 GOVT. ORDER DT. 23-5-1986.

EXT.P16 GOVT. ORDER DT. 13-9-1995.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 21533of 1999

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Dated this, the 16th January, 2007.

J U D G M E N T

Petitioner has approached this Court challenging orders by which the Government has ordered recovery of excess amounts paid to the petitioner on account of wrong fixation of pay. It is not disputed before me that the wrong fixation was in violation of Rule 28A of the Kerala Service Rules. It is settled by a Division Bench of this Court in Principal Secretary to Government v. Goala, reported in 2005(4) KLLT 190 that when there is wrong fixation contrary to a statutory rule, even if there is a mistake which is mutual excess amount paid on account of such fixation due to mistake, can be recovered. In view of the said decision, I do not think that the petitioner can challenge the orders by which excess amounts drawn by him on account of his wrong fixation of pay has been ordered to be recovered.

2. In the above circumstances, the original petition is dismissed.

The petitioner submits that on account of the pendency of this original petition, the retirement benefits of the petitioner has not so far been disbursed. There would be a direction to the respondents to disburse the retirement benefits due to the petitioner within two months from the date of receipt of a copy of this judgment.

Sd/- S. Siri Jagan, Judge.

Tds/